

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6298 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A K SHAH ADDL. GENERAL SECRETARY(LEGAL)

Versus

SECRETRY

Appearance:

MR DS VASAVADA for Petitioners

MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/01/2001

C A V JUDGEMENT

The petitioners above named, have preferred this petition under Article 226, 4, and 16 of the Constitution of India for appropriate writ, order or direction for a declaration that the action of the respondent Gujarat Electricity Board (for short, 'Board') in not granting higher grade to the second petitioner w.e.f. 1.8.1972, which is arbitrary, illegal and contrary to the

provisions of GSO 253, read with Establishment circulars no.7 and 8 and violates Articles 14 and 16 of the Constitution and for directing the respondent Board to grant the grade of Executive Engineer to petitioner no.2 w.e.f. 1.8.1972 with all consequential benefits including seniority and 15% interest of arrears payable to the petitioners.

2. A short question which arises in the present petition relates to the grant of higher grade to the petitioner no.2. The second petitioner was at the relevant point of time, employed as Dy.Engineer in the employment of the Board. It is an admitted position that on completion of 9 years of service, if the person concerned has not been promoted to next higher grade, then he would be entitled to pay scales available to the said higher grade subject to a condition that he should be fit and suitable and eligible for such promotion. Therefore, while granting higher grade or scale, the promotional criteria is being considered by the respondent. There is no dispute about the aforesaid position.

3. The petitioner has claimed that he had already completed 9 years service and, therefore, he was entitled and eligible to get the said higher grade and higher pay scale payable to a person belonging to the cadre of Executive Engineer w.e.f. 1.8.1972. It is also his contention that there was no adverse remark against the petitioner during the last three years and, therefore, it was a matter of his right to earn the said benefit of higher grade. It is contended by the petitioner that despite the said position, the petitioner was not given higher grade w.e.f. 1.8.1972 but it was granted on a later date. That the said action of the respondent is, therefore, illegal, unconstitutional and against the provisions of the rules and regulations of the respondent board. The petitioner has, therefore, prayed that the present petition be allowed and the aforesaid benefit be granted to the second petitioner.

4. Incidentally, the petitioner no.1 is shown to be the Additional Joint Secretary (Legal) to the Gujarat Electricity Board Engineers' Association. It shows that he represented the Union but the relief has been claimed only for and on behalf of the second petitioner. There is no dispute between the parties about the same.

5. On receipt of the aforesaid petition, notice was issued pending admission at the first instance and, thereafter, rule was issued by this court. The

respondent has made appearance in response to the service of notice. Mr M D Pandya, learned Sr.Advocate appears for the respondent. He has filed affidavit and documents in support of the defence. The petitioner has also filed affidavit of the first petitioner in rejoinder.

6. I have heard the learned Advocates M/s. D S Vasavada and M D Pandya, for the parties and have perused the papers. As said above, the facts are not in dispute. ON 1.8.1972, the petitioner had already completed 9 years of service and, therefore, according to the case of the second petitioner, he was entitled and eligible to higher grade w.e.f. 1.8.1972. It is not much in dispute that on that date, the second petitioner had completed 9 years of service and, therefore, if there was nothing objectionable against him, he was entitled to higher grade and higher pay scale payable to the post of Executive Engineer on and from 1.8.1972. However, Mr M D Pandya learned Advocate for the respondent has drawn my attention to the two affidavits filed on behalf of the respondent. The first affidavit that has been placed on record is that of Mr A L A Golandaz, Dy.General Manager of the respondent Board which is placed at page 70. The important portion of the said affidavit can be gathered from para 4 thereof at page 71. The same can be reproduced for ready reference as follows:

"It is submitted that for the adverse remarks for the year 1972-73 there is no pending representation and there is no question that the appeal has not been disposed of till this date. It is submitted that petitioner was granted higher grade admissible under GSO-253 with effect from 15.1.1978 which was subsequently reviewed and the benefit was granted from 1.4.77. It is submitted that the principles laid down for granting such higher grade clearly state that incumbent should earn three clear confidential reports ending in 9 years span during service rendered in the cadre. Petitioner no.2 Shri Nagraj was conveyed adverse remarks for the year 1971-72, 1972-73 and 1973-74 which has come in the way of granting higher grade late, as his work was not found satisfactory for the aforesaid period and the adverse remarks for the aforesaid period were as under:

1971-72

"He is generally found showing lack of interest and initiative in work. He has developed some

sort of ego by which he evades work and with the result it is difficult to get the work giving rude replies. The adverse remarks was conveyed on 12.5.1973."

1972-73

"He is found to be organising the act of efficiency and expert handling of works. He seems hesitating in shouldering the responsibility. He should put up his experience and better technical knowledge into practice to see that Board's work are executed with effective supervision and speed. These remarks were conveyed on 1.5.1973."

1973-74

He can execute work but requires speed for project. Work is not reflected. The remark conveyed on 20.4.1974".

7. Therefore, according to the arguments of Mr M D Pandya, learned Advocate for the respondent, the second petitioner suffered three consecutive adverse remarks in his Annual Confidential Report. It is also his case that since the grant of higher grade and higher scale of pay, of a higher post, is required to be released on same footing as is done in case of promotion. That, it was, therefore, necessary for the respondent to consider three years' Annual Confidential reports, for taking such a decision. That, considering these reports for the aforesaid three years, it is very clear that the second petitioner suffered adverse remarks for three consecutive years and, therefore, he was not entitled to higher grade w.e.f. 1.8.1972.

8. As against this, the learned Advocate for the petitioner, Mr D S Vasavada, has contended that so far as the adverse Annual Confidential Report for the year 1972-73 is concerned, the second petitioner had submitted a representation to the respondent on 11.5.1973 and that there is no reply received by the second petitioner regarding the decision taken thereon. It is therefore, the submission of Mr Vasavada that in view of the above position the ACR for the year 1972-73 cannot and could not be treated to be adverse and, therefore, the same should have been ignored for the purpose of extending benefit of higher grade to the petitioner no.2. Another argument is that the adverse remark of 1979 has been expunged and, therefore, the said remarks cannot go against the present petitioner no.2. This ACR is not

relevant since it has not been taken into account by the respondent for releasing higher grade from 1977.

9. The contention raised on behalf of the respondent by Mr M D Pandya is that the respondent has not received any representation from the petitioner against the adverse Annual Confidential Report of 1972-73. It is further contended that adverse remarks for the year 1979 have not been taken into consideration for the purpose of releasing the said benefit to the petitioner no.2.

10. Both the parties have filed their affidavits and counter affidavits on the aforesaid subject. The petitioners have contended in their affidavits that representation was made on 11.5.1973 against the adverse Annual Confidential Report for the year 1972-73 and the said representation is not pending before the respondent. On the other hand, the respondent has positively stated that no such representation was received and no such representation is pending before the respondent. A perusal of the affidavit of the first petitioner Mr A K Shah, on behalf of petitioner no.2 clearly shows that the aforesaid representation is pending and it has not been disposed of which can be gathered from page 3 of the said affidavit dated 20.6.1990. On the other hand, the respondent has filed an affidavit of Manjit Singh Bajwa, Industrial Relations Officer of the respondent Board, which has been sworn in on 25.7.2000. There is also an affidavit of Mr B J Patel, Industrial Relations Officer which has been sworn in on 3.11.1998.

11. These affidavits make it clear that the respondent has not received the aforesaid representation of the concerned petitioner, and therefore, no such representation is pending before the respondent for consideration.

12. Another argument of the learned Advocate for the petitioners is that so far as the adverse remarks of 1971-72 are concerned, they have not been conveyed to the petitioner by the respondent. On the other hand, the respondent has come out with a case that these remarks have been conveyed to the petitioner concerned.

13. Both the parties have filed affidavits and counter affidavit. Both have stood at their stand. The petitioners have said that the said remarks have not been conveyed to the second petitioner. The respondent has said that this adverse confidential report has been conveyed to petitioner no.2. So the controversy is due to pendency of representation dated 11.5.1973 for the

year 1972-73 and for the ACR for the year 1971-72 which are shown to be against petitioner no.2.

14. On going through the aforesaid rival contentions, it becomes clear that these are the disputed questions of facts. We have to decide in the present matter the questions of facts which are not disputed questions of facts. When there is a question of disputed fact, then evidence is necessary and the parties may lead oral and documentary evidence and after appreciation of evidence, the question of fact can be answered by the court. This is not the court in which such process can be gone into. This is a court exercising its extra ordinary constitutional powers, functions and jurisdiction under Article 226 of the Constitution of India. Therefore, it is not open to this court to go into these disputed questions of fact. I am, therefore, of the view that the aforesaid are the disputed questions of fact which cannot be gone into by this court in exercise of extra ordinary constitutional functions and powers and jurisdiction under Article 226 of the Constitution of India. Once these disputed questions of facts are not entertained then the fact remains that there is no material before this court as to why the higher grade should be granted to the petitioner no.2. retrospectively. It is more so, when the respondents have come out with their case that the second petitioner had suffered adverse ACR as aforesaid and when the said ACR were against the petitioner no.2., naturally, the higher grade could not be granted to the petitioner no.2 as it was made clear that the ACR of three consecutive years were looked into for the extension of benefit of higher grade. Since the aforesaid remarks were against the petitioner no.2, the respondent could not naturally extend the said benefit to the second petitioner in 1972 as has been claimed by the said petitioner.

15. It is a matter of fact that the benefit was extended earlier with effect from 15.1.1978. However, subsequently, the order was revised on 6.8.1985 and the benefit was extended w.e.f. 1.4.1977. This shows that whenever it was possible under the rules, the respondent has extended the said benefit to the second petitioner. However, when adverse remarks were there against the petitioner for the aforesaid years, then in that event, the respondent was unable to extend the said benefits to the petitioner no.2 earlier than 1.4.1977. The said action on the part of the respondent cannot be treated to be unjust, illegal or against the provisions of rules, regulations etc. On the contrary the said decision is

based on the fact that there were adverse ACR against the petitioner no.2. for the aforesaid years and, therefore, the respondent could not extend the benefit of higher grade to the petitioner earlier than 1.4.1977. In my opinion, the aforesaid decision on the part of the respondent cannot be said to be illegal, unjust or otherwise vulnerable or against the provisions of rules and regulations or the standing policy of the respondent.

16. In that view of the matter, the said decision cannot be lightly quashed and set aside. In my opinion, the said decision was taken by the respondent after considering the relevant materials available with the respondents at the relevant point of time and no illegality has been committed by the respondent in arriving at the said decision. Once it is found that there were adverse remarks against petitioner no.2 for the aforesaid years, then he was naturally not entitled to the benefit of higher grade. Consequently, the respondent was legally justified in refusing the said benefit to the second petitioner as claimed by him. Since no illegality has been committed by the respondent, the petitioner no.2 cannot succeed in getting any relief from this court.

In the result, there is no merit in the present petition and it deserves to be dismissed, since petitioner no.2 is not entitled to any relief for getting higher grade from the date he claims in the petition. This petition is accordingly dismissed. Rule discharged. In the facts and circumstances, there shall be no order as to costs.

12.1.2001 [D P Buch, J.]
msp